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## EXTRAORDINARY

### PART II—Section 3—Sub-section (ii) PUBLISHED BY AUTHORITY

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#### MINISTRY OF FINANCE

(Department of Economic Affairs)

#### NOTIFICATION

New Delhi, the 15th April 1961

**S.O. 858.**—Whereas on the application of the Reserve Bank of India under sub-section (1) of section 45 of the Banking Companies Act, 1949 (Act 10 of 1949), the Central Government has made an order of moratorium in respect of the Bank of Kerala Ltd., Trivandrum under sub-section (2) of the said section.

And whereas the Reserve Bank of India in exercise of the powers conferred by sub-section (4) of Section 45 of the said Act has prepared a scheme for the amalgamation of the Bank of Kerala Ltd., with the Canara Bank Ltd.

And whereas the Reserve Bank after having sent the said scheme in draft to the banking companies concerned in accordance with the provisions of sub-section (6) of the said section and after having considered the suggestions and objections received in regard to the said scheme has modified that scheme and forwarded it to the Central Government for sanction.

Now, therefore, in exercise of the powers conferred by sub-section (7) of section 45 of the said Act, the Central Government hereby sanctions the scheme on and subject to the terms and conditions hereinafter mentioned.

(1) The Bank of Kerala Ltd. shall be the transferor bank and the Canara Bank Ltd. shall be the transferee bank.

(2) As from the date which the Central Government may specify for this purpose under sub-section (7) of section 45 of the said Act (hereinafter referred to as the prescribed date) all rights, powers, claims, demands, interests, authorities, privileges, benefits, assets and properties of the transferor bank, movable and immovable, including premises subject to all incidents of tenure and to the rents and other sums of money and covenants reserved by or contained in the leases or agreements under which they are held, all office furniture, loose equipment, plant, apparatus and appliances, books, papers, stocks of stationery, other stocks and stores, all investments in stocks, shares and securities, all bills receivable in hand and in transit, all cash in hand and on current or deposit account (including money at call or short notice) with banks, bullion, all book debts, mortgage debts and other debts with the benefit of the securities, or any guarantee therefor, all other, if any, property rights and assets of every description including all rights of action and benefit of all guarantees in connection with the business of the transferor bank shall, subject to the other provisions of this scheme, stand transferred to, and become the properties and assets of the transferee bank; and as from the prescribed date all the liabilities, duties and obligations of the transferor bank shall be and shall become the liabilities, duties and obligations of the transferee bank to the extent and in the manner provided hereinafter.

Without prejudice to the generality of the foregoing provisions all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature subsisting or having effect immediately before the prescribed date shall be effective to the extent and in the manner hereinafter provided against or in favour of the transferee bank and may be acted upon as if instead of the transferor bank the transferee bank had been a party thereto or as if they had been issued in favour of the transferee bank.

If on the prescribed date any suit, appeal or other legal proceeding of whatever nature by or against the transferor bank is pending, the same shall not abate, or be discontinued or be in any way prejudicially affected, but shall subject to the other provisions of this scheme be prosecuted and enforced by or against the transferee bank.

(3) The books of the transferor bank shall be closed and balanced and a balance sheet prepared in the first instance as at the close of business on the 19th November, 1960 and thereafter as at the close of business on the day immediately preceding the prescribed date and the balance sheets shall be got audited and certified by a Chartered Accountant or Accountants or a firm of Chartered Accountants approved or nominated by the Reserve Bank of India for the purpose.

A copy each of the balance sheets of the transferor bank, prepared in accordance with the provisions of the foregoing paragraph, shall be filed by the transferor bank with the Registrar of Companies as soon as possible after it has been received and thereafter the transferor bank shall not be required to prepare balance sheets or profit and loss accounts, or to lay the same before its members or file copies thereof with the Registrar of Companies.

(4) I. The transferee bank shall, in consultation with the transferor bank value the property and assets and reckon the liabilities of the transferor bank in accordance with the following provisions, namely,

- (a) Investments including Government securities shall be valued at the market rates prevailing on the day immediately preceding the prescribed date provided that the securities of the Central Government such as Post Office Certificate, Treasury Savings Deposit Certificates and any other securities or certificates issued under the small savings scheme of the Central Government shall be valued at their face value or encashable value as on the said date, whichever is higher.
- (b) Where the market value of any Government security such as the Zamindari abolition bonds or other similar security in respect of which the principal is payable in instalments, is not ascertainable or is, for any reason, not considered as reflecting the fair value thereof or as otherwise appropriate, the security shall be valued at such an amount as is considered reasonable having regard to the instalments of principal and interest remaining to be paid, the period during which such instalments are payable, the yield of any security issued by the Government to which the security pertains and having the same or approximately the same maturity and other relevant factors.
- (c) Where the market value of any security, share, debenture, bond or other investment is not considered reasonable by reason of its having been affected by abnormal factors, the investment may be valued on the basis of its average market value over any reasonable period.
- (d) Where the market value of any security, share, debenture, bond or other investment is not ascertainable, only such value, if any, shall be taken into account as is considered reasonable having regard to the financial position of the issuing concern, the dividends paid by it during the preceding five years and other relevant factors.
- (e) Premises and all other immovable properties and any assets acquired in satisfaction of claims shall be valued at their market value.
- (f) Furniture and fixtures, stationery in stock and other assets, if any, shall be valued at the written down value as per books or the realisable value as may be considered reasonable.
- (g) Advances including bills purchased and discounted, book debts and sundry assets will be scrutinised by the transferee bank and the security, including guarantee held as cover therefor examined and verified by the transferee bank. Thereafter, the advances, including

portions thereof, will be classified into two categories, namely "advances considered good and readily realisable" and "Advances considered not readily realisable and/or bad or doubtful of recovery".

II. Liabilities for purposes of this scheme shall include all contingent liabilities which the transferee bank may reasonably be expected or required to meet out of its own resources on or after the prescribed date.

III. Where the valuation of any asset cannot be determined on the prescribed date, it may with the approval of the Reserve Bank of India be treated partly or wholly as an asset realisable at a later date.

In the event of any disagreement between the transferee bank and the transferor bank as regards the valuation of any asset or the classification of any advance or the determination of any liability, the matter shall be referred to the Reserve Bank of India whose opinion shall be final provided that until such an opinion is received, the valuation of the item or portion thereof by the transferee bank shall provisionally be adopted for the purposes of this scheme.

It shall be competent for the Reserve Bank in the event of its becoming necessary to do so, to obtain such technical advice as it may consider to be appropriate in connection with the valuation of any such item of asset or determination of any such item of liability, and the cost of obtaining such advice shall be payable in full out of the assets of the transferor bank.

The valuation of the assets and the determination of the liabilities in accordance with the foregoing provisions shall be binding on both the banks and the members and creditors thereof.

(5) On the prescribed date, the entire amount of the paid-up capital and reserves of the transferor bank shall be treated as provision for bad and doubtful debts and depreciation in other assets of the transferor bank and the rights of the members of the transferor bank shall, in relation to the transferee bank, be as provided for in paragraph (7) below.

(6) In consideration of the transfer of the property and the assets of the transferor bank to the transferee bank, the transferee bank shall discharge the liabilities of the transferor bank to the extent and in the order mentioned in this and the succeeding paragraphs:

(a) every creditor of the transferor bank, who is entitled to a fixed charge (or to a floating charge which has crystallised into a fixed charge) on the assets of the transferor bank shall be asked to value his security within such period as may be prescribed by the transferee bank and in the event of his failure to do so the said security shall be valued by the transferee bank on the expiry of the prescribed period, and thereafter the liabilities to every such creditor shall be paid to the extent of the value of the security in respect of which he holds a charge, the balance of the amount, if any, remaining unpaid being treated as a debt to be discharged in accordance with the provisions of clause (d) below.

(b) the following liabilities as on the prescribed date shall be paid in full:

(i) all revenues, taxes, cesses and rates due from the transferor bank to the Central or a State Government or to a local authority;

(ii) all wages or salary (including wages payable for time or piece work) of any employees, in respect of the services rendered to the transferor bank before the prescribed date;

(iii) all amounts due in respect of any compensation or liability for compensation under the Workmen's Compensation Act, 1923 (Act 8 of 1923) in respect of the death or disablement of any employee of the transferor bank;

(iv) all amounts due in respect of any compensation payable under any of the provisions of Chapter VA of the Industrial Disputes Act (Act 14 of 1947);

(v) all sums deposited by any employee of the transferor bank with that bank as staff security deposits and interest accrued thereon upto the prescribed date.

The foregoing liabilities shall rank equally among themselves and if the assets are insufficient to meet them they shall abate in equal proportions, provided that as and when it becomes possible for the transferee bank to do so, further payments on a pro rata basis of the further sums due in respect of these liabilities at the time of each payment shall be made in terms of paragraph (7).

(c) In respect of every savings bank account or current account or any other deposit, including a fixed deposit, cash certificate, monthly deposit, cumulative deposit, deposit payable at call or short notice or any other deposit by whatever name called with the transferor bank, the transferee bank shall open with itself on the prescribed date a corresponding and similar account in the name of the respective holder(s) thereof with a balance equal to a sum of two hundred and fifty rupees or the balance in the account whichever may be less:

Provided that the sum total of the amounts credited in respect of the accounts standing in the name of any one person (and not jointly with that of any other person) shall not exceed two hundred and fifty rupees; and

Provided further that if the value of the assets as determined under paragraph (4) after deducting therefrom the amounts necessary for meeting the liabilities under clauses (a) and (b) of this paragraph is less than the amount required to give effect to this clause, the transferee bank shall credit each account with a sum equal to the pro rata share available therefor.

(d) After the payments referred to in clause (c) above have been made, the transferee bank shall, in respect of every such account as is mentioned in that clause, credit the account with the pro rata share available in respect of each of the accounts and in respect of every liability which is treated as unsecured (which liability for the purpose of this scheme shall rank equally with the other liabilities referred to in this clause) the transferee bank shall at the same time pay the pro rata share which may be available for the purpose.

*Explanation.*—The term 'pro rata' occurring in this paragraph and elsewhere in this scheme shall mean in proportion to the respective amounts remaining due at the time of the payment or distribution.

(7) (i) Any amount due to a creditor or to any other person under clause (a) or as the case may be clause (b) of paragraph (6) and remaining unpaid on the prescribed date shall continue to be treated as a liability of the transferee bank until a distribution has been made on the expiry of the period referred to in clause (vii) below, and in respect of

(a) every account mentioned in clause (c) or as the case may be clause (d) of paragraph (6), the balance in the account, if any, remaining to be paid or credited to that account in terms of that clause, and

(b) every share in the transferor bank, the amount which was treated as paid-up towards share capital by or on behalf of each shareholder immediately before the prescribed date and the amount paid on account of the calls made by the transferee bank in pursuance of clause (ii) of this paragraph,

shall be treated as a collection account, payable on or before the date of final distribution referred to in clause (vii) below, and shall be entered as such on the books of the transferee bank.

(ii) The transferee bank shall as soon as may be after the prescribed date call upon every person who on the prescribed date was registered as a holder of an ordinary share in the transferor bank or who would have been entitled to be so registered to pay within three months from such date as may be specified, the uncalled amount remaining unpaid by him in respect of such shares and the calls in arrears, if any, and the transferee bank shall take all available steps, having regard to the circumstances of each case, to demand and enforce the payment of the amounts due under this clause, together with interest at six per cent per annum for the period of the default.

(iii) The transferee bank shall, in respect of the advances, bills purchased and discounted, book debts and sundry assets which are classified as not readily realisable and/or bad or doubtful of recovery or which are or may be realisable wholly or partly after the prescribed date in terms of paragraph (4) above, take

all available steps, having regard to the circumstances of each case, to demand and enforce payment, provided, however, that if the amount of the debt exceeds Rs. 2,500 the transferee bank shall not except with the approval of the Reserve Bank of India

(a) enter into a compromise or arrangement with the debtor or any other person

(b) sell or otherwise dispose of any securities transferred to it.

(iv) The transferee bank shall, in addition, take all available steps, having regard to the circumstances of each case, to demand and enforce the payment of the amounts, if any, awarded as damages by the High Court against any promoter, director, manager or other officer of the transferor bank under section 45L of the Banking Companies Act read with section 45H thereof and also with section 543 of the Companies Act, 1956.

(v) The transferee bank shall at such periodical intervals as may be possible or convenient make out of the realisations effected by it on account of the assets referred to in clauses (ii), (iii) and (iv) of this paragraph, after deducting therefrom the expenditure incurred for the purpose, and out of the balance, if any, which may be available from out of the contingent liabilities as reckoned for the purposes of the scheme, after the extent of such liabilities has been finally ascertained, payments in the order and to the extent mentioned below, namely,

(a) In the case of every liability which is represented by a fixed charge or by a floating charge which has crystallised into a fixed charge as referred to in clause (a) of paragraph (6), the amount, if any, realised from the security and due to be paid to the person entitled thereto;

(b) in the case of every liability under clause (b) of paragraph (6), the amount due towards that liability;

(c) in the case of every collection account referred to in sub-clause (a) of clause (i) of this paragraph, the amount due to the collection account till payment in full against that account has been made and thereafter;

(d) in the case of every collection account referred to in sub-clause (b) of clause (j) of this paragraph the amount, if any, due to the former shareholder on that account:

Provided that the purposes of this clause, liabilities in each of the categories (b), (c) and (d) above shall rank equally among themselves, and without prejudice to the order of priority in which the persons in various categories are to be paid, the said liabilities shall be discharged by payments *pro rata* within each category.

(vi) The amounts due on account of the liabilities and the collection accounts referred to in this paragraph shall be deemed to be a liability of the transferee bank only to the extent of the payments that can be made under clause (v) of this paragraph.

(vii) On the expiry of twelve years from the prescribed date or such earlier period as the Central Government, after consulting the Reserve Bank, may specify for this purpose, any asset which might not have been valued by that date or any item referred to clause (iii) of this paragraph shall be valued by the transferee bank in consultation with the Reserve Bank and the transferee bank shall distribute any amount or amounts determined in the light of that valuation to the depositors and shareholders in the order and manner provided for in clause (v) of this paragraph.

(viii) The transferee bank shall give to any person to whom any payment may be due against an account mentioned in sub-clause (b) of clause (i) read with sub-clause (d) of clause (v) of this paragraph such reasonable notice, not exceeding three months and not being less than one month as it may consider appropriate, of the payments being due, and

(a) if during the period of this notice a request has not been received in writing for the payment of the amount due in cash and if the amount of the payment due is also not less than the highest closing price of an ordinary share in the transferee bank as quoted on any recognised stock exchange on or immediately before the date on

which the notice is issued, or where the ordinary share of the transferee bank is not quoted on any recognised stock exchange the price of the share as determined by the Reserve Bank, the transferee bank shall allot to the payee a share or shares in the transferee bank, to the extent possible, and disburse in cash the balance, if any, of the amount which may be due; and

(b) if the conditions mentioned in sub-clause (a) above are not fulfilled, the transferee bank shall disburse the amount in cash.

(ix) The allotment of the shares or the payments aforesaid shall in each case be made before the end of six months from the date on which the notice of the payment falling due is deemed to have been served in accordance with the provisions of this scheme.

(x) The share capital of the transferee bank shall be deemed to have been increased and it shall also be lawful for the transferee bank to issue the shares in the manner and to the extent specified for the purpose of this scheme.

(8) Notwithstanding anything to the contrary contained in any contract, express or implied, no interest shall accrue on account of a deposit or other liability in any account mentioned in paragraphs (6) and (7) after the date of the moratorium except in respect of the staff security deposits mentioned in paragraph (6)(b), and interest shall be paid only in respect of the amounts credited under clause (c) and clause (d) of paragraph (6) and clause (v) of paragraph (7) from the prescribed date only at such rates as the transferee bank may allow.

(9) No depositor or other creditor of the transferor bank shall be entitled to make any demand against the transferor bank or the transferee bank in respect of any liability of the transferor bank to him except to the extent prescribed by this scheme.

(10) No suit or other legal proceedings shall lie against the Central Government, the Reserve Bank of India or the transferee or the transferor banks for anything which is in good faith done or intended to be done in pursuance of this scheme.

(11) All the employees of the transferor bank other than Shri R. Balakrishnan Nair (its director-in-charge) and Shri N. Krishna Panikkar (its Head Office Agent) shall continue in service and be deemed to have been appointed by the transferee bank at the same remuneration and on the same terms and conditions of service as were applicable to such employees immediately before the 21st November 1960.

Provided that where any employee of the transferor bank has by notice in writing given to the transferee bank at any time before the expiry of one month next following the date on which this scheme has been sanctioned by the Central Government, intimated his intention of not becoming an employee of the transferee bank, he shall be entitled to the payment of such compensation, if any, under the provisions of the Industrial Disputes Act, 1947 and such pension, gratuity, provident fund and other retirement benefits as may be ordinarily admissible under the rules or authorisations of the transferor bank immediately before the 21st November 1960:

Provided further that the transferee bank shall, in respect of the employees of the transferor bank, who are deemed to have been appointed as employees of the transferee bank, be deemed also to have taken over liability for the payment of retrenchment compensation in the event of their being retrenched while in the service of the transferee bank, on the basis that their service has been continuous and has not been interrupted by their transfer to the transferee bank.

(12) The persons specified in paragraph (11) shall, on the prescribed date, cease to be the employees of the transferor bank, and notwithstanding anything contained in any law for the time being in force or any agreement or contract, the persons so specified shall be entitled to and only to such pension, gratuity, provident fund and other retirement benefits as may be ordinarily admissible to them under the rules or authorisations of the transferor bank immediately before the 21st November 1960.

(13) The transferee bank shall, on the expiry of a period not longer than three years from the date on which this scheme is sanctioned, pay or grant to the employees of the transferor bank the same remuneration and the same terms and conditions of service as are applicable to the employees of corresponding rank or status of the transferee bank, subject to the qualifications and experience of

the said employees of the transferor bank being the same as or equivalent to those of such other employees of the transferee bank:

Provided that if any doubt or difference arises as to whether the qualifications or experience of any of the said employees are the same as or equivalent to the qualifications and experience of the other employees of corresponding rank or status of the transferee bank or as to the procedure or principles to be adopted for the fixation of the pay of the employees in the scales of pay of the transferee bank, the doubt or difference shall be referred to the Reserve Bank of India whose decision thereon shall be final.

(14) The transferee bank shall submit to the Reserve Bank of India such statements and information as may be required by the Reserve Bank of India from time to time regarding the implementation of this scheme.

(15) Any notice or other communication required to be given by the transferee bank shall be considered to be duly given if addressed and sent by pre-paid ordinary post to the addressee at the address registered in the books of the transferor bank until a new address is registered in the books of the transferee bank and such notice shall be deemed to be served on the expiry of forty-eight hours after it has been posted. Any notice or communication which is of general interest shall be advertised in addition in one or more daily newspapers which may be in circulation at the places where the transferor bank was transacting its business.

(16) If any doubt arises in interpreting any of the provisions of this scheme, the matter shall be referred to the Reserve Bank of India and their opinion shall be conclusive and binding on both the transferee and transferor banks, and also on all the members, depositors and other creditors and employees of each of those banks and on any other person having any right or liability in relation to any of these banks.

(17) If any difficulty arises in giving effect to the provisions of this scheme, the Central Government may issue to the transferor and the transferee banks or to either of them such directions not inconsistent with this scheme as may appear to the Central Government, after consulting the Reserve Bank of India, to be necessary or appropriate for the purpose of removing the difficulty.

[No. F. 4(131)-BC/60.]

R. K. SESHADRI, Dy. Secy.

